A.C. 45355 NNH-CV17-6072389-S	:	APPELLATE COURT
ELIYAHU MIRLIS	:	
v.	:	
YESHIVA OF NEW HAVEN, INC. FKA THE GAN, INC. FKA THE GAN SCHOOL, TIKVAH HIGH SCHOOL AND YESHIVA OF NEW HAVEN, INC.	:	APRIL 7, 2022

MOTION TO TERMINATE STAY

Pursuant to Practice Book § 66-11(d) and (e), the plaintiff/appellee, Eliyahu Mirlis ("Plaintiff") respectfully requests that the trial court (Hon. John Cirello) terminate the stay in the above-captioned appeal, the second appeal in this action filed by the defendant/appellant, Yeshiva of New Haven, Inc. f/k/a the Gan, Inc. f/k/a the Gan School, Tikvah High School and Yeshiva of New Haven, Inc. ("Defendant"), because the appeal was filed solely for the purpose of delay and/or the due administration of justice requires termination of the stay. In support of his Motion, Plaintiff states as follows:

I. BRIEF HISTORY OF THE CASE

A. The Underlying Sexual Abuse Action against Defendant and D. Greer

While he was a minor student at a school operated by Defendant, Plaintiff was repeatedly sexually abused and assaulted by Daniel Greer ("D. Greer"), Defendant's director, president, and then-school principal. On June 6, 2017, following a jury trial in *Eliyahu Mirlis v. Daniel Greer et al.*, 3:16-cv-00678 (D. Conn.) (the "Underlying Action"), a judgment (the "Final Judgment") issued in Plaintiff's favor and against D. Greer and Defendant in the amount of $21,749,041.10. The Final Judgment was affirmed on appeal. *See Mirlis v. Greer*, 952 F.3d 36 (2d Cir., March 3, 2020). Defendant and D. Greer, a Yale educated attorney,

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have gone to great lengths to ensure that Plaintiff never recovers any of the millions of dollars owed to him, delaying and litigating any possible issue to avoid justice finally being done.

B. Prejudgment Litigation in This Action and the First Appeal

Plaintiff commenced this foreclosure action on July 21, 2017, almost five years ago, against Defendant, seeking to foreclose the judgment lien (the "Judgment Lien") that Plaintiff recorded against Defendant's property (the "Property"), which is a school building located at 765 Elm Street, New Haven, Connecticut.[1] Thus, this foreclosure action was brought to enforce the Judgment Lien recorded on the Property in order to partially recover on the Final Judgment.

On November 8, 2017, Plaintiff filed his Motion for Summary Judgment and supporting memorandum (Doc. Nos. 104, 105), which was granted as to liability by the Court on January 16, 2018 (Doc. No. 104.10). The Yeshiva did not object to the Motion for Summary Judgment, but rather, filed a Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) (the "**2018 First Motion to Substitute**") on January 16, 2018, seeking to have the trial court substitute a "cash bond for the Property in the amount of the fair market value of the Property[.]" (2018 First Motion to Substitute, p.3.) As noted, Defendant filed the 2018 Motion to Substitute more than four (4) years ago. Consistent with its delay tactics and inability to actually post a bond, Defendant did not prosecute the 2018 First Motion to Substitute until a Motion for Judgment was filed by Plaintiff approximately seventeen (17) months later – after Plaintiff was compelled to seek relief from the trial court to gain access to the Property to

[1] It is unclear to what extent the Property continues to be used as a school. However, it appears that the programming has been substantially limited as a result of D. Greer's abuse of Plaintiff and his subsequent incarceration after being convicted of several crimes arising out of his sexual abuse of Plaintiff.

conduct an appraisal and a hearing on valuation was held.

On June 5, 2019, Plaintiff filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) (the "Motion for Judgment") and an appraisal of the Property. In response, Defendant filed its (1) Objection to Motion for Judgment of Strict Foreclosure, (2) Motion to Discharge Judgment Lien and Substitute Bond, and (3) Motion to Continue hearing on Motion for Judgment of Strict Foreclosure (Doc. No. 115) (the **"2019 Second Motion to Substitute"**) on June 12, 2019, seeking, *inter alia*, to have the Motion for Judgment denied because of a dispute as to the value of the Property and on account of the 2018 First Motion to Substitute.

On February 24, 2020, and prior to the entry of Judgment, the trial court issued its Memorandum of Decision: Hearing on Valuation (Doc. No. 133.00) (the "Valuation Decision"), *inter alia*, finding the value of the Property to be $620,000.00 based on the appraisals prepared in the second and third quarter of 2019, and permitting Defendant at that time to substitute a bond for the Judgment Lien. Defendant **never** attempted to substitute a bond.

On March 9, 2020 (more than two years ago), the trial court entered a judgment of strict foreclosure (the "Foreclosure Judgment") against Defendant, finding, *inter alia*, the amount of the debt to be $22,167,939.41 and the fair market value of the Property to be $620,000.00. The trial court set a law day for Defendant, the owner of the equity of redemption, of June 1, 2020. Notably, Defendant did **not** (1) oppose the entry of a judgment of strict foreclosure, (2) appeal the Foreclosure Judgment, (3) post a bond before the Foreclosure Judgment entered, or (4) ask for additional time to post the bond before the Foreclosure Judgment entered. However, it subsequently filed an appeal (the "First Appeal") of the Valuation Decision challenging the Court's valuation of the Property. The Appellate Court affirmed the Valuation Decision and the Supreme Court denied certification. *See Mirlis*

v. Yeshiva of New Haven, Inc., 205 Conn. App. 206, AC 44016, *cert. denied* 338 Conn. 903, PSC-200503 (2021).

C. Post-Judgment Proceedings in This Action

After the Supreme Court denied certification, Plaintiff filed a Motion to Reset Law Day after Appeal (Doc. No. 146) ("Motion to Reset") on September 15, 2021, asking the trial court to set a new law day pursuant to Practice Book § 17-10. Plaintiff requested the shortest possible law day based on the myriad delays caused by Defendant to that point. In response to the Motion to Reset, on September 24, 2021, Defendant filed its (1) Objection to Motion to Reset Law Days and Stay Proceedings and (2) Motion to Substitute Bond (Doc. No. 147) (the "**2021 Third Motion to Substitute**"), seeking to have the Court deny the Motion to Reset and stay these proceedings while two motions were pending in the District Court: a Motion to Modify Temporary Restraining Order (the "Motion to Modify", Doc. No. 69), filed in *Mirlis v. Edgewood Elm Housing, Inc.*, 3:19-cv-700 (D. Conn.) (the "Veil Piercing Action"), and D. Greer's second motion to set aside the Final Judgment in the Underlying Action, filed on June 8, 2021 – more than a year after the Second Circuit affirmed the Final Judgment and almost five years after the Final Judgment entered (the "Second Motion to Set Aside").[2] On October 2, 2021, the trial court granted the Motion to Reset and entered a judgment of strict foreclosure with a law day of January 31, 2022.

On January 14, 2022, Defendant filed its Motion to Open Judgment and Extend the Law Day and for Order to Substitute Bond (Doc. No. 153) (the "First Motion to Open"), seeking an order opening the most recent judgment of strict foreclosure and extending the

[2] The Motion to Modify was fully decided by order dated February 21, 2022. The Second Motion to Set Aside was denied by order dated March 30, 2022. (*See* Notice, Doc. No. 172.)

law day to May 2, 2022, and for a **fourth time**, an order permitting it to substitute a bond for the Judgment Lien (the "**2022 Fourth Motion to Substitute**"). Again, Defendant relied upon the pending Motion to Modify and Second Motion to Set Aside in the District Court as grounds for opening the judgment and extending the law day. In fact, Defendant made the same arguments that it made in the 2021 Third Motion to Substitute. The trial court denied the First Motion to Open as set forth in its Memorandum of Decision on Motion, dated January 24, 2022 (Doc. No. 159) (the "Decision Denying First Motion to Open"), concluding that Defendant had not met its burden of proof that equity requires opening the foreclosure judgment.

II. SPECIFIC FACTS UPON WHICH APPELLEE RELIES[3]

On February 3, 2022, the Yeshiva filed its Renewed Motion to (1) Reopen Judgment for Purposes of Extending the Law Day and (2) to Substitute Bond (Doc. No. 162) (the "**Second Motion to Open**" and "**2022 Fifth Motion to Substitute**"), again seeking to open the judgment of strict foreclosure, to extend the law day, and **for the fifth time**, an order permitting the substitution of a bond for the Judgment Lien. On February 18, 2022, the trial court **denied** the Second Motion to Open and 2022 Fifth Motion to Substitute. (Order, Doc. No. 162.10 (the "Order Denying Second Motion to Open").) It noted several grounds for its decision, including that Defendant did not currently have the funds to post a bond, the pendency of this case since 2017, and Defendant's failure to post a bond, despite having the opportunity to do so over the nearly five years this case has been pending.

On March 10, 2022, which unsurprisingly was the deadline for filing an appeal of the

[3] Plaintiff also incorporates the background from the previous section as a basis for the relief requested.

trial court's denial of the Second Motion to Open, Defendant filed both a Notice of Appeal and a Motion to Reargue/Reconsider the trial court's ruling on the Second Motion to Open (Doc. No. 167) (the "Motion to Reargue"). The Motion to Reargue was the **sixth** attempt by Defendant to substitute a bond and its **third** attempt to revisit the arguments originally raised in the 2021 Third Motion to Substitute, which was filed in response to the Motion to Reset, and repeated in the Yeshiva's two previous motions to open. On April 2, 2022, the trial court summarily denied the Motion to Reargue and sustained Plaintiff's objection thereto.

III. LEGAL GROUNDS UPON WHICH APPELLEE RELIES

Practice Book § 61-11(d) provides that trial court may order the stay to be terminated if the appeal is only filed for delay or "due administration of justice so requires".

> [S]tays during foreclosures are guided by the familiar "balancing of the equities" test, which requires evaluation of the relative harms and includes consideration of factors such as (1) the likelihood that the appellant will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the judgment; (3) the effect of a stay upon other parties to the proceeding; and (4) the public interest involved.

CitiMortgage, Inc. v. McLaughlin, No. HHDCV116020540S, 2014 Conn. Super. LEXIS 156, at *2-3 (Super. Ct. Jan. 24, 2014) (citing cases).

It is clear in this case that the appeal was only taken for the purposes of delay and that the due administration of justice requires that the stay be terminated. First, as noted, Plaintiff has been seeking to foreclose the Judgment Lien against the sole real Property owned by Defendant for almost five (5) years. The Property is non-residential and there are limited if any activities being conducted on it. There are and can be no underlying defenses to the underlying Judgment Lien based on *res judicata* and *collateral estoppel*. Defendant also never appealed the entry of the initial Foreclosure Judgment, just the prior valuation of the Property. Defendant has also made no effort whatsoever to voluntarily pay anything, let

alone satisfy the underlying Final Judgment in favor of Plaintiff. What Defendant has done is to pursue a perpetual litigation machination in its efforts to delay some modest justice to Plaintiff on the underlying Final Judgment.

In the latest dilatory effort, Defendant has appealed the latest foreclosure judgment, notwithstanding that it did **not** appeal the initial foreclosure judgment years earlier. It is highly unlikely that Defendant will prevail in its appeal given the high standard for reversing the trial court's justified refusal to open the judgment in this case and the entry of a judgment of strict foreclosure, both of which are reviewed for abuse of discretion. *USAA Fed. Sav. Bank v. Gianetti*, 197 Conn. App. 814, 820 (2020) (order denying motion to open); *Wachovia Mortg., FSB v. Toczek*, 196 Conn. App. 1, 10 (2020) (judgment strict foreclosure). There is ample support for the trial court's decision in this case, and it is clear that it did not abuse its discretion or commit an error of law. As the trial court indicated, it considered the entire record and the parties' briefs and arguments in determining that Defendant failed to meet its burden to demonstrate that the Judgment should be opened. (Order Denying Second Motion to Open.) This includes the long delays caused by Defendant and its consistent failure to attempt to post a bond in lieu of the Judgment Lien despite having first sought such relief over four years ago. In addition, the trial court certainly did not abuse its discretion in entering a new judgment of strict foreclosure extending the law day as the law day was within the twenty-day appeal period for the Order Denying Second Motion to Open. *See Citigroup Glob. Mkts. Realty Corp. v. Christiansen*, 163 Conn. App. 635, 639 (2016).

As to the second factor, Defendant will not suffer an irreparable injury if the Foreclosure Judgment is, as it should be, immediately implemented. Defendant first raised the issue of substituting a bond for the Judgment Lien **almost five (5) years ago**

and before the TRO in the Veil Piercing Action or the foreclosure judgment in this case entered. If it were really interested in preserving its property, the Yeshiva surely could have gotten funds from the Veil Piercing Defendants long ago. Moreover, while Defendant filed a motion to substitute more than four years ago in the form of the 2018 First Motion to Substitute, which was filed more than two-and-a-half years before the District Court entered the TRO in the Veil Piercing Action on August 25, 2020, Defendant did nothing to prosecute the 2018 First Motion to Substitute, and in fact, did nothing regarding a bond until Plaintiff moved for judgment of strict foreclosure in this action. Even then, after the Valuation Hearing, Defendant chose not to i) substitute a bond, ii) challenge the entry of the Foreclosure Judgment, or iii) appeal the Foreclosure Judgment. Moreover, Defendant lost on appeal in September 2021 when Certification was denied, but did not even identify a potential source of funds to substitute a bond until the filing of the 2022 Motion to Substitute, and still to this day admittedly does not have those funds. All of this and the other facts before the trial court demonstrate that Defendant was more concerned in causing years of delay to frustrate and delay Plaintiff's legitimate collection efforts rather than actually attempting to preserve the Property. Moreover, there is no prejudice to Defendant because it retains the right to redeem the Property with the equity of redemption until title vests by paying the full amount of the debt it legitimately owes to Plaintiff.

The effect of the stay on Plaintiff, on the other hand, is profound. Plaintiff was first sexually assaulted by D. Greer, who dominates and controls Defendant, in 2002 when he was a minor. It took many years for Plaintiff to finally reach a mental and emotional position where he was able to seek redress from Defendant and D. Greer (including

enduring discovery, a public trial, and cross-examination by opposing counsel). Now, having obtained the Final Judgment, Plaintiff is once again subjected to abuse by Defendant and D. Greer as they continue do anything they can to thwart Plaintiff's efforts to collect compensation for the terrible wrongs visited upon him. This conduct includes unwarranted delay tactics, such as multiple appeals and extensive motion practice in this action and in other actions such as the Veil Piercing Action.

Moreover, the debt in this action was found to be $22,202,533.91, which vastly exceeds the value of the Property. In *HSBC Bank USA v. Kriz*, No. CV085007301S, 2011 Conn. Super. LEXIS 77, at *9 (Super. Ct. Jan. 14, 2011), the court, in terminating the appellate stay agreed with the plaintiff's arguments that the "'case itself has been pending for roughly two years [which is contrary to] the stated policy of the judiciary to expedite foreclosure actions . . . The plaintiff is grossly under secured in terms of debt to value of the subject property and at this time the negative equity is in excess of more than [$400,000 which] leads to the conclusion that further delay will solely benefit the defendant and cause substantial prejudice to the plaintiff.'" Here, the facts weigh even heavier in favor of terminating the stay as this action has been pending for almost five years and the negative equity in the Property exceeds $21 million based on the last valuation, with interest accruing daily.[4]

Last, consideration of the public interest counsels for terminating the stay. There is a public interest "in not hindering the efforts of creditors to enforce and collect their judgments." *Crothers v. Pilgrim Mortg. Corp.*, 95 Civ. 4681 (SAS), 1997 U.S. Dist. LEXIS

[4] Plaintiff believes that in the current real estate market the Property is worth substantially more than the $620,000 valuation found by the trial court in early 2020, but still considerably less than the more than $22 million debt owed to Plaintiff.

11721, at *7 (S.D.N.Y. Aug. 7, 1997); *see also Brabson v. Friendship House of W. N.Y., Inc.*, No. 94-CV-0834E(F), 2000 U.S. Dist. LEXIS 13453, at *5 (W.D.N.Y. Sep. 5, 2000) (". . . the public has an interest in seeing that a plaintiff is allowed to enforce a judgment without facing an inordinately long delay."). The public's interest in seeing judgments enforced without undue delay is especially compelling in intentional tort actions where the tortfeasor was incarcerated as a result of the sexual misconduct and predatory behavior in order to further the "fundamental purposes of the tort compensation system of deterring wrongful conduct and shifting the blame to the party who is in the best position to prevent the injury." *Cefaratti v. Aranow*, 321 Conn. 593, 622 (2016). Here, the wrongful conduct and the injury are particularly heinous – the sexual assault of a minor. There is a strong public interest in making sure that conduct as proven in the Underlying Action is prevented, rather than rewarding the liable party by allowing it to delay and frustrate collection *ad nauseam*. That Defendant is controlled by the same individual tortfeasor, D. Greer, while incarcerated, only underscores the need for justice now.

IV. CONCLUSION

It is clear that the appeal was only taken for the purposes of delay, and Defendant is exceedingly unlikely to succeed on appeal. In addition, given the nature of the wrongs in this action and Defendant's sustained wrongful efforts to avoid collection of the Final Judgment, the due administration of justice is in no way served by the continuation of the stay. Therefore, the Court should terminate the appellate stay in this matter. and grant Plaintiff such other and further relief as justice requires.

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CERTIFICATE

I hereby certify that the foregoing Motion to Terminate Stay complies with Practice Book § 62-7, that a copy of the foregoing was emailed to counsel of record listed below on April 7, 2022, that this document contains no personally identifiable information or such information has been redacted, and this document complies with the applicable rules of appellate procedure.

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